

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

National Pasteurized Eggs, LLC

v.

Case No. 07-cv-103-PB

L. John Davidson

O R D E R

I agree with the defendant that the complaint does not allege facts that bring this matter within the subject matter jurisdiction of the federal courts. The complaint turns exclusively on the effect under state law of assignments made in the Global Settlement Memorandum entered into on September 20, 2001. Thus, the case does not arise under patent law. See Jim Arnold Corp. v. Hydrotech Sys., Inc., 109 F.3d 1567, 1575 (Fed. Cir. 1997); Gianelli v. Chirkes, 377 F. Supp. 2d 49, 52-53 (D.D.C. 2005). The Bankruptcy Court's Sale Order issued on July 25, 2003, expressly leaves unresolved the competing claims of ownership to the patents that are the subject of the present dispute. Thus, plaintiff cannot credibly claim that the court has jurisdiction because the action arises under the Sale Order. Finally, the fact that the defendant once brought suit in federal court against the plaintiff based on the same underlying facts

does not alter my determination that the current action does not arise under federal law. Accordingly, the court does not have subject matter jurisdiction under either 28 U.S.C. § 1331 or 28 U.S.C. § 1338(a).

The complaint in its present form does not allege sufficient facts to permit a finding of diversity of citizenship jurisdiction. Unless an amended complaint is filed within 10 days of the date of this order that properly alleges diversity citizenship jurisdiction, the existing complaint shall be dismissed without prejudice. The motion for partial summary judgment (Doc. No. 20) is denied without prejudice. Any challenge to the court's subject matter jurisdiction over the amended complaint shall be filed within 10 days of the filing of the amended complaint. A renewed motion for summary judgment may be filed within 30 days after any new challenge to the court's subject matter jurisdiction is resolved.

SO ORDERED.

/s/Paul Barbadoro  
Paul Barbadoro  
United States District Judge

May 7, 2008

cc: Peter G. Callaghan, Esq.  
Steven M. Latici, Esq.  
D. William Toone, Esq.